IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

DARRYL EASLEY,	)	
	)	
Plaintiff,	)	NO. 4:17-cv-1388
	)	(St. Louis County, MO #16SL-CC04290)
-vs-	)	
	)	JURY TRIAL DEMANDED
DE LONGHI AMERICA, INC.	)	
	)	
Defendant.	)	

NOTICE OF REMOVAL AND DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, DE LONGHI AMERICA, INC. (hereinafter "DE LONGHI"), by and through its undersigned attorneys, remove to this Court the above-entitled case from the Circuit Court of the County of St. Louis, Missouri.

1. The removed case is a civil action filed on November 18, 2016, in the Circuit Court of the County of St. Louis, Missouri.

2. As required by 28 U.S.C. § 1446(a), attached as Exhibit 1 is a copy of the Petition and Summons served upon Defendant DE LONGHI, as well as the Notice of Service of Process. Defendant DE LONGHI was served on March 28, 2017. See Exhibit 1.

3. Venue of this removal action is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the state court action was pending.

4. Upon information and belief the Plaintiff is a citizen of the State of Missouri.

5. Defendant DE LONGHI is incorporated under the laws of the State of Delaware, and its principal place of business is in New Jersey.

6. This Notice of Removal is filed by Defendant DE LONGHI with this Court within 30 days of receipt by Defendant DE LONGHI of the initial pleading as required by 28 U.S.C. § 1446(b).

7. There is in excess of $75,000.00 in controversy in this matter, exclusive of interest and costs.

8. While the Petition prays for damages in an amount greater than $25,000.00, pursuant to Missouri pleading requirements, the allegations in the Petition illustrate that an amount in excess of $75,000.00 is at issue. The Petition alleges that DE LONGHI manufactured a Safe Heater which failed to properly operate on November 14, 2013. The Petition further alleges that as a result of the Safe Heater's failure to properly operate, the Plaintiff's Decedent was injured on November 14, 2013, and died as a result of said injuries on November 19, 2013. Exhibit 1, ¶ 4. According to the Petition, the Plaintiff claims to have suffered "great mental pain and anguish resulting from decedent's untimely death, in an amount that plaintiffs are unable to state with exactitude and certainty." Exhibit 1, ¶ 7.

9. Indeed, Plaintiff, through counsel, has made two separate demands for settlement. The first demand for settlement was sent on March 17, 2014, and demanded $600,000.00 to settle the matter. See Exhibit 2. A second demand was sent on August 25, 2014, and demanded $250,000.00 to settle the matter. See Exhibit 3. This Court has determined that in cases where the prayer for relief is unspecified, the court may look at the petition or make an independent appraisal as to the value of the alleged claim.

McGuire v. J.B. Hunt Transport, Inc., 2010 WL 2399550 (E.D.Mo.2010), citing *Corwin Jeep Sales & Service, Inc. v. American Motors Sales,* 670 F.Supp.591, 596 (M.D.Pa.1986). This Court has also determined that the existence of a settlement demand is relevant to resolving the issue as to the amount in controversy. *Id*., citing *Thomas v. Mann,* 2006 WL 2620644 at *1 (W.D.Mo.*); Gramc v. Millar Co./Schindler Enterprises,* 3 F.Supp.2d 1082, 1084 (E.D.Mo.1998).

10. Plaintiff may argue that removal is not proper because the Petition brought on behalf of Plaintiff only contains a prayer for relief of an amount "in excess of $25,000.00 (Twenty Five Thousand Dollars). Undoubtedly, Plaintiff pleaded in this manner so as to meet the pleading requirements under Missouri law. See, § 516.097 R.S.Mo. ("If a recovery of money be demanded, no dollar amount or figure shall be included in the demand except to determine the proper jurisdictional authority, but the prayer shall be for damages that are fair and reasonable. The provisions of this section shall not affect the conduct of trial with regard to stating, proving, or arguing damages."); Mo. S. Ct. R. 55.05 ("If a recovery be demanded, the amount shall be stated, except that in actions for damages based upon an alleged tort, no dollar amount shall be included in the demand except to determine the proper jurisdictional authority, but the prayer for relief shall be for such damages as fair and reasonable. A party may argue at trial that a specific amount of damages should be awarded even though the prayer is for a fair and reasonable amount."). Despite the amount requested in the Petition, Plaintiff's claim, as evidenced by the allegations and demand letters, is clearly more than $75,000.00.

11. DE LONGHI removes this case pursuant to 28 U.S.C. § § 1332, 1441, and 1446, due to diversity of citizenship among the parties and sufficient amount in controversy.

12. DE LONGHI will promptly serve written notice of the removal of this action upon all adverse parties and will file such notice with the Clerk of the Circuit Court for the County of St. Louis, Missouri, as required by 28 U.S.C. § 1446(d).

13. Defendant demands a trial by jury of all issues to be tried.

WHEREFORE, Defendant, DE LONGHI AMERICA, INC., respectfully gives notice that the above-entitled cause is removed from the Circuit Court of the County of St. Louis, Missouri, to the United States District Court for the Eastern District of Missouri.

Respectfully submitted,

DE LONGHI AMERICA, INC., Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on April ____, 2017, I electronically filed **Notice of Removal and Demand for Jury Trial** with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to the following:

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DE LONGHI AMERICA, INC., Defendant

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